

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SHBIEN CROSS,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC., a  
Florida corporation; FIDELITY NATIONAL  
TITLE GROUP, INC., a Florida corporation,

Defendants.

No. 2:16-cv-1867 TSZ

STIPULATED PROTECTIVE ORDER

**I. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

**II. "CONFIDENTIAL" MATERIAL**

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: (a) Plaintiff's medical and/or counseling records; (b) either

1 party's accounting information or tax records, and (c) Defendants' sensitive personnel and  
2 payroll files, confidential personal information for current and former employees of Defendants,  
3 and documents that otherwise describe, contain or disclose internal company information,  
4 including customer information, intellectual property, financial information, trade secrets,  
5 competitive and strategic initiatives, business plans and other business-related information. The  
6 parties agree that this Protective Order applies to the remaining discovery yet to be conducted.

### 7 **III. SCOPE**

8 The protections conferred by this agreement cover not only confidential material (as  
9 defined above), but also (1) any information copied or extracted from confidential material; (2)  
10 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
11 conversations, or presentations by parties or their counsel that might reveal confidential  
12 material. However, the protections conferred by this agreement do not cover information that is  
13 in the public domain or becomes part of the public domain through trial or otherwise.

### 14 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 **A. Basic Principles.** A receiving party may use confidential material that is  
16 disclosed or produced by another party or by a non-party in connection with this case only for  
17 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
18 disclosed only to the categories of persons and under the conditions described in this agreement.  
19 Confidential material must be stored and maintained by a receiving party at a location and in a  
20 secure manner that ensures that access is limited to the persons authorized under this agreement.

21 **B. Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise  
22 ordered by the court or permitted in writing by the designating party, a receiving party may  
23 disclose any confidential material only to:

24 **1.** the receiving party's counsel of record in this action, as well as employees  
25 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

26 **2.** the officers, directors, and employees (including in house counsel) of the  
27 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
2 designated;

3 3. experts and consultants to whom disclosure is reasonably necessary for  
4 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
5 (Exhibit A);

6 4. the court, court personnel, and court reporters and their staff;

7 5. copy or imaging services retained by counsel to assist in the duplication  
8 of confidential material, provided that counsel for the party retaining the copy or imaging  
9 service instructs the service not to disclose any confidential material to third parties and to  
10 immediately return all originals and copies of any confidential material;

11 6. during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
13 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

14 7. the author or recipient of a document containing the information or a  
15 custodian or other person who otherwise possessed or knew the information.

16 C. Filing Confidential Material. Before filing confidential material or discussing or  
17 referencing such material in court filings, the filing party shall confer with the designating party  
18 to determine whether the designating party will remove the confidential designation, whether the  
19 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
20 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
21 standards that will be applied when a party seeks permission from the court to file material  
22 under seal.

## 23 V. DESIGNATING PROTECTED MATERIAL

24 A. Exercise of Restraint and Care in Designating Material for Protection. Each  
25 party or non-party that designates information or items for protection under this agreement must  
26 take care to limit any such designation to specific material that qualifies under the appropriate  
27 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not  
3 swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited.

5 If it comes to a designating party's attention that information or items that it designated  
6 for protection do not qualify for protection, the designating party must promptly notify all other  
7 parties that it is withdrawing the mistaken designation.

8 **B. Manner and Timing of Designations.** Except as otherwise provided in this  
9 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
11 be clearly so designated before or when the material is disclosed or produced.

12 **1. Information in documentary form:** (e.g., paper or electronic documents  
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
15 contains confidential material. If only a portion or portions of the material on a page qualifies  
16 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
17 making appropriate markings in the margins).

18 **2. Testimony given in deposition or in other pretrial or trial proceedings:** the  
19 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
20 protected testimony, without prejudice to their right to so designate other testimony after  
21 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
22 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

23 **3. Other tangible items:** the producing party must affix in a prominent place  
24 on the exterior of the container or containers in which the information or item is stored the word  
25 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
26 the producing party, to the extent practicable, shall identify the protected portion(s).

1           C.     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6                   **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7           A.     Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13          B.     Meet and Confer. The parties must make every attempt to resolve any dispute  
14 regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or  
16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
17 conference with other affected parties in an effort to resolve the dispute without court action.  
18 The certification must list the date, manner, and participants to the conference. A good faith  
19 effort to confer requires a face-to-face meeting or a telephone conference.

20          C.     Judicial Intervention. If the parties cannot resolve a challenge without court  
21 intervention, the designating party may file and serve a motion to retain confidentiality under  
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
23 persuasion in any such motion shall be on the designating party. All parties shall continue to  
24 maintain the material in question as confidential until the court rules on the challenge.  
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**X. NON TERMINATION AND RETURN OF DOCUMENTS**

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: August 28, 2017

s/ Jim Lobsenz  
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Lucinda J. Luke WSBA #26783  
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1 DATED: August 28, 2017

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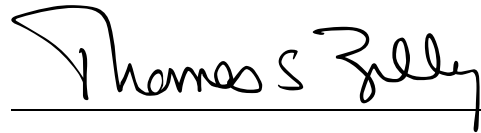
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9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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11 DATED this 31st day of August, 2017.

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14 Thomas S. Zilly

15 United States District Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
5 have read in its entirety and understand the Stipulated Protective Order that was issued by the  
6 United States District Court for the Western District of Washington on \_\_\_\_\_ [date]  
7 in the case of *Shbien Cross v. Fidelity National Financial, Inc. et al.*, No. 2:16-cv-1867-TSZ. I  
8 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
11 manner any information or item that is subject to this Stipulated Protective Order to any person  
12 or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

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17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_  
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